



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2006

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THE HONOURABLE MR. JUSTICE K.MOHAN RAM

C.M.A.No.78 of 2000

United India Insurance
Company Limited , rep.by
its Branch Manager,
Karaikkal.

.. Appellant

-Vs-

1. Sudhakar-Minor
Minor Sudhakar rep.by
his father and natural guardian
Mr.Ramayyan

2. Balamurugan

.. Respondents

APPEAL filed under section 73 of Motor Vehicles Act 1988 against the award of the Motor Accident Claims Tribunal, (Additional Sub Judge (In charge)) Mayiladuthurai in M.A.C.T.O.P. No.6 of 1996 dated 19.07.1999.

For Appellant : Ms. N.B.Surekha

For Respondents : Mr. S.Sounthar

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J U D G E M E N T

Being aggrieved by the award of the Motor Accidents Claims Tribunal(Additional Sub Judge) Mayiladuthurai dated 19.7.1999 made in M.C.O.P.No.6 of 1996, the second respondent therein viz., the Insurer has filed the above appeal.

2. Before the Tribunal, the claimant/first respondent herein prayed for a compensation of Rs.1,00,000/- in respect of the injuries sustained by him in a motor accident involving the vehicle bearing registration No.PY-02-6005 Yamaha RX -100 belonging to the second respondent herein. The appellant herein is the insurer of the vehicle involved in the accident. Before the Tribunal though it was contended that the motor cycle was insured with the appellant herein, in the claim petition, policy details like policy number, date of insurance policy and period of insurance policy were not



furnished. Though in the claim petition in column 17, it is stated that a legal notice dated 16.12.1995 was issued to the insurer mentioning the vehicle number and also the policy number and no reply was received, the said notice was not produced before the Tribunal and no evidence was produced regarding the policy details of the vehicle. But, unfortunately, the second respondent herein, the owner of the vehicle also remained exparte before the Tribunal. In the counter affidavit filed by the insurer in paragraph 2, it is stated as follows:

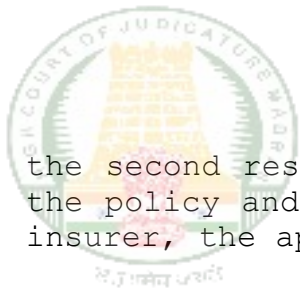
" At the outset, this respondent submits that the cycle alleged to have involved in the accident does not appear to have been insured by this respondent.

But inspite of the non furnishing of the details of the policy by the claimant, the Tribunal had thrown the burden of proof on the insurer and fastened the liability on the Insurance Company. Being aggrieved by that, the above appeal has been filed.

3. Heard Ms.N.B.Surekha, learned counsel appearing for the appellant and Mr.S.Soundar, learned counsel appearing for the first respondent.

4. The learned counsel for the appellant would submit that though the claimant in the claim petition in Column 17 had mentioned that a legal notice containing the details of the policy pertaining to the vehicle involved in the accident was issued and there was no reply from the insurer, the claimant has failed to produce the said notice before the Tribunal and also failed to produce the details of the policy. The learned counsel further submits that when the insurer has taken a specific plea in the counter statement that the vehicle in question involved in the accident has not been insured with the appellant, the claimant ought to have taken necessary steps to call upon the owner of the vehicle to produce the policy number of the vehicle or taken other legal steps to get the details. In the absence of policy details, it is impossible for the insurer to produce the policy. The Tribunal, in fact, has fastened the burden on the insurer to prove the negative, which is against the settled proposition of law. The learned counsel further submits that unless it is proved by positive evidence that the vehicle in question involved in the accident was insured with the insurer, no liability can be fastened on the insurer.

5. Per contra, learned counsel appearing for the first respondent submitted that the appellant, in the counter filed before the Tribunal has not specifically denied the existence of the policy, but only stated that the vehicle does not appear to have been insured with the appellant. The learned counsel further submits that the insurer should have issued a notice to the owner of the vehicle,



the second respondent herein calling upon him to produce the copy of the policy and in the absence of such steps having been taken by the insurer, the appellant herein is liable to pay the compensation.

6. The only point to be decided in the appeal is whether the vehicle in question involved in the accident had been insured with the appellant herein and if any, whether the appellant is liable to pay the compensation amount or not?

7. Learned counsel appearing for the appellant submitted that the contention of the appellant before the Tribunal was that no branch office of the appellant existed at Karaikal on the relevant date and the vehicle involved in the accident was not registered with this branch as claimed by the claimant. But the Tribunal had rejected the said plea on the ground that the appellant had not stated in the counter statement that there was no branch office at Karaikal. The Tribunal by observing that the appellant had not examined any witness has given a finding that the appellant is the insurer of the vehicle. The said approach on the part of the Tribunal, according to the learned counsel, is erroneous. In support of her contention, the learned counsel relied upon the decision reported in National Insurance Company Ltd.,-v-Anand & Ananda Charan Reddy (AIR 1996 Orissa, 52) wherein the Orissa High Court observed that the non production of all policies and all registers cannot be considered as an adverse circumstance against the insurance Company. It was further observed in the said decision as follows:

"Neither the owner nor the claimant has adduced any evidence to show that the vehicle in question was insured with the appellant. Even the seizure list on which much emphasis has been laid down by the Tribunal, does not indicate that the vehicle in question was insured with the National Insurance Co. Ltd., The Tribunal has no doubt made a reference to its order dated 19.1.1991, whereby the Insurance Co. was directed to produce the policy and registers but which particular policy or which particular register was required to be produced has not been mentioned in the order. I am really at a loss to understand whether the learned Tribunal required the Insurance Company to produce each and every policy and each and every register in its office or what. This is something which probably the Presiding Officer alone can explain. It is surprising as to how such an omnibus order case to be passed. If the Tribunal desires a party to produce some documents in Court, it is expected to specify the document that is to be produced. A party cannot be expected to produce in Court



each and every available document which is in his possession. Under the circumstances, non production of all policies and registers cannot, be considered as an adverse circumstance against the appellant".

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8. As rightly pointed out by the learned counsel appearing for the appellant, unless the policy details are furnished to the insurer by the claimant, it is impossible for the insurer to produce the policy before the Tribunal. In this case, the second respondent/ the owner of the vehicle remained exparte. The first respondent herein has also not adduced any evidence to show that the vehicle in question was insured with the appellant. The claimant has also not produced any evidence to show that the branch office of the appellant was located at the relevant point of time at Karaikal. The Tribunal has erred in fastening the burden on the insurer to prove a negative thing, which into considered view of this Court, is erroneous. Therefore, this Court is of the considered view that the finding of the Tribunal that the vehicle in question was insured with the appellant herein is erroneous and has to be set aside and accordingly set aside.

9. However, the tribunal has found that the accident had occurred due to the negligence on the part of the rider of the motor cycle involved in the accident. Thus, without considering the fact that the liability rests on the owner of the vehicle viz., the second respondent herein, the Tribunal had passed the award. Accordingly, the claimant/ first respondent herein can proceed against the second respondent to recover the same. It is brought to the notice of this Court by either side that pursuant to the orders passed in the stay petition, the entire compensation has been deposited before the Tribunal and the first respondent has withdrawn the accrued interest on the deposit amount. Considering the fact that the claimant was a minor, the Insurance Company shall not insist for refund of the interest amount withdrawn by the claimant. The Insurer is entitled to withdraw the amount deposited to the credit of in M.C.O.P.No.6 of 1996 on the file of Motor Accidents Claims Tribunal(Additional Sub Judge in Charge) Mayiladuthurai.



10. In the result, this appeal is allowed. The award passed by the Motor Accident Claims Tribunal (Additional Sub Judge (in charge) Mayiladuthurai in M.C.O.P.No.6 of 1996 dated 19.7.1999 is hereby set aside. No cost.

sg

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Motor Accident Claims Tribunal,
(Additional Sub Judge)
Mayiladuthurai.
 2. The Branch Manager,
United India Insurance Co. Ltd., Karaikal.
 3. The Record Keeper, VR Records, High Court.
- 1 CC TO MR.S. SOUNTHAR, ADVOCATE SR 42090
- 1 CC TO MR.R. VEDANTHAM, ADVOCATE SR 41932

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JSK(CO)

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